IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1337

UNIVERSITY OF NEVADA, and the STATE OF NEVADA,

Petitioners,

v.

JOHN MICHAEL HALL, Minor by and Through His Guardian Ad Litem JOHN C. HALL and PATRICIA HALL,

Respondents.

PETITION FOR WRIT OF CERTIORARI
to the Court of Appeal for the State of California First Appellate District Division Four

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To the Court of Appeal for the State of California First Appellate District Division Four

The Petitioners State of Nevada and University of Nevada respectfully pray that a Writ of Certiorari be issued to review the judgment and opinion of the Court of Appeal of the State of California First Appellate District-Division Four, entered in this proceeding on October 24, 1977.

OPINION BELOW

The opinion of the Court of Appeal of the State of California, First Appellate District, Division Four, and the opinion of the California Supreme Court in the case of *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2nd 1363, 105 Cal. Rptr. 355 (1972) cert denied 414 U.S. 820 (1973) upon which the decision of the Court of Appeal of the State of California is primarily based appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeal of the State of California was entered on October 24, 1977. A Petition for hearing in the California Supreme Court was timely filed pursuant to the California Rules of Court. The Petition for Hearing in the California Supreme Court to review the judgment of the Court of Appeal of the State of California was denied on December 22, 1977. This Petition for Certiorari was filed within 90 days of that date. This court's jurisdiction is invoked under 28 U.S.C., §1257 (3).

QUESTIONS PRESENTED

Whether it is constitutionally permissible for a State to ignore the sovereignty of Sister States when such Sister States are performing governmental functions within the boundaries of the forum State.

Whether it is constitutionally permissible for a State, without her consent, to be sued in the courts of a Sister State.

Whether performing governmental functions outside a State's borders strips a State of sovereignty for purposes of the sovereign immunity doctrine.

Whether a State consents to suit in a Sister State's courts by sending employees into the Sister State to perform governmental functions.

Whether, when a state statutorily consents to suit in the courts of her Sister States, the Full Faith and Credit Clause of the United States Constitution requires the courts of the Sister State to recognize and apply any limitations on liability contained in the statutory consent.

STATUTORY PROVISIONS INVOLVED

Nevada Revised Statutes 41.031-41.039 inclusive and specifically Nevada Revised Statutes 41.035. These statutes contain the waiver of sovereign immunity by the State of Nevada and the limitation placed upon liability therein. The statutory provisions are fully set forth in the Appendix.

STATEMENT OF THE CASE

On May 13, 1968 an employee of

the University of Nevada Reno, a governmental arm of the State of Nevada, was involved in a motor vehicle accident in Placer County, California. As a result of the motor vehicle accident a complaint for money damages was filed by respondents in the Superior Court for the County of San Francisco, State of California, on May 12, 1969. It is conceded that at the time of the accident the employee was engaged in official University business and the fact of his agency is not disputed.

Petitioners' motion to quash service of process was granted. Respondents appealed to the District Court of Appeal for the State of California and subsequently to the California Supreme Court. The California Supreme Court, in a decision reported as *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2nd 1363 105 Cal. Rptr. 355 (1972) cert denied 414 U.S. 820 (1973), reversed the lower court's decision and remanded the case to the trial court.

At the trial petitioners moved for an order limiting the amount of damages to the statutory limitation on liability set forth in Section 41.035 of the Nevada Revised Statutes. Petitioners also requested a jury instruction restricting the amount of damages to Nevada's statutory limitation. Petitioners' requests, which were based upon Article 4, Section 1 of the United States Constitution, were denied. At the conclusion of trial respondents

were awarded damages in the amount of One Million One Hundred Fifty Thousand Dollars ($1,150,000).

Following the award of damages petitioners sought, and respondents refused, a stipulation that no execution on the judgment would be taken pending the appeal and review process. This stipulation was necessary due to the fact that Nevada collects sales tax revenue from major corporations doing business in Nevada through said major corporations' regional headquarters within the State of California. *Thus in any given accounting quarter there will be more than sufficient funds to satisfy the judgment from Nevada moneys situated in California banks.* Respondents are aware of the California banks in which the Nevada accounts are situated and *thus it will not be necessary for respondents to sue on the California judgment in the State of Nevada.*[1]

An appeal from the Money Judgment was timely filed with the Court of Appeal of the State of California, First Appellate District, Division Four. A decision adverse to petitioners was

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1/ Decision on the Petition for Certiorari should not proceed on an assumed simple expedient of Nevada having an opportunity to apply her own statutory limitation in an action to enforce the California judgment in Nevada's Courts.

rendered and a request for hearing was timely filed in the California Supreme Court. The California Supreme Court denied hearing and this Petition for Certiorari was filed.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW INVOLVES A SUBSTANTIAL FEDERAL QUESTION WHICH HAS NOT BEEN DECIDED BY THIS COURT

The salient issue presented is whether a State in the performance of governmental functions may enter the borders of Sister States without being stripped of her sovereignty. This issue, *which is an issue of first impression,* inherently involves the nature of the relationship of the States of the Union to each other.

The California Court of Appeal held that when a State exits her borders she leaves behind every attribute of sovereignty, save one; that one retained attribute being the ability to have judgments rendered against her. In the words of the California court:

> "We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California courts with respect to those activities. When the sister state enters into activity in this state, it is not exercising

> sovereign power over the citizens of this state and is not entitled to the benefits of the sovereign immunity doctrine as to those activities, unless this state has conferred immunity by law or as a *matter of comity*." Opinion of the California Court of Appeal, Appendix p. iv, quoting the California Supreme Court in the case *Hall v. University of Nevada,* 8 Cal.3rd 522, 524, 503 P.2nd 1363, 105 Cal. Rptr., 355 (1972) cert denied 414 U.S. 820 (1973). (Emphasis added)

The gist of the conclusion of the California Court of Appeal is that the States within the Union are sovereigns only within their own borders and Sister States are free to ignore that sovereignty once a State exits its boundaries. Such a proposition is unalterably opposed to the anvil of federalism upon which the Union of once independent States was forged.

The framers of the Constitution were not unmindful of the need to assure that the several States would not treat each other as independent nations. Indeed, the very purpose of the Full Faith and Credit Clause was to alter the status of the individual States as independent foreign sovereignties, each free to ignore the rights and proceedings of the other and to make each, an integral part of a single nation. *Sherrer v. Sherrer,* 334 U.S. 343, 355 (1978); *Order of United*

Commercial Travelers of America v. Wolfe, 331 U.S. 586, 618, (1947); *Magnolia Petroleum Co. v. Hunt,* 320 U.S. 430, 440 (1943) rehearing denied 321 U.S. 801. The Full Faith and Credit Clause thus substituted a command for the earlier principles of comity and basically altered the status of the States as independent sovereigns. *Estin v. Estin* 334 U.S. 541, 545 (1948).

The question which this Court is requested to resolve is whether the status of the member States were altered in such a manner as to allow a State to retain the vestiges of sovereignty when exiting its borders to perform governmental functions. Conversely, are the individual States free to ignore the sovereignty of Sister States when a Sister State is performing governmental functions outside such Sister State's boundaries. This question involves and necessarily raises sub-issues which are specified below.

TO RESOLVE THE QUESTION OF WHETHER A STATE MAY, WITHOUT HER CONSENT, BE SUED IN A SISTER STATE'S COURTS IN ACTIONS ARISING FROM THE PERFORMANCE OF GOVERNMENTAL FUNCTIONS

It is an established principle of jurisprudence that a sovereign cannot be sued in any court without its consent. *Beers v. Arkansas,* 61 U.S. 527, 529 (1857). As stated by this Court in *Cunningham v. Macon and Brunswick R.R. Co.,* 109 U.S. 446, 451 (1883):

> "It may be accepted as a point of departure unquestioned, that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which a State may be made a party in the supreme court of the United States by virtue of the original jurisdiction conferred on that court by the constitution."

The decision of the California Court of Appeal is clearly in direct conflict with the axiom that a State may not be sued without its consent in that the California Court of Appeal concluded that Sister States may be sued in California regardless of the existence of consent.[2] The necessity for reviewing such decision is paramount.

To illuminate why a resolution of the question presented is so compelling, one need only consider a few examples of necessary interaction between States. A prime example is an

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2/"After holding that the State and University of Nevada were not immune from suit in California, the Court noted that this conclusion makes 'it unnecessary to consider plaintiff's further contention that the State of Nevada has consented by statute to suit in California'." Opinion of the Court of Appeal Appendix p. iv.

agency operated pursuant to interstate compact where the agency offices are located in one of the States which are parties to the compact. Do the other States to the compact subject themselves to the whim of that State, with respect to possible suits and judgments, by sending employees to the agency office to perform necessary governmental functions? Or what of necessary interaction in the executive branch? Does a State subject itself to the possibility of great financial exposure by sending its Governor or officials to other States to confer with Governors and officials of other States? Indeed, does a State assume the risk that Sister States will bring her to answer in their courts when she sends her attorneys into other States to depose witnesses or even to defend litigation such as this?

That a State should not be subjected to suit without her consent is so basic to the principles of federalism that the Eleventh Amendment was added to the United States Constitution to insure that a State would not be sued in Federal Courts by citizens of Sister States without her consent. Thus the Federal Government, to whom the States specifically and willingly surrendered much of their sovereignty, does not have the power to call a State into her courts, except as specifically consented to in the Constitution. However, if the California Court of Appeal decision is permitted to stand, any State may call

any other State into such State's trial courts upon the whim of citizens of the forum States.

TO RESOLVE THE QUESTION OF WHETHER A STATE CONSENTS TO SUIT BY SENDING EMPLOYEES INTO SISTER STATES TO PERFORM GOVERNMENTAL FUNCTIONS

As set forth above the underlying basis for the decision of the California Court of Appeal was the conclusion that State sovereignty ends at State borders. The Court of Appeal based its holding on the California Supreme Court in *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2nd 1363, 105 Cal. Rptr. 355 (1972) cert denied 414 U.S. 820 (1973) which concluded that when a State enters the borders of a Sister State she consents to being held accountable according to the laws of such Sister State. The principal case relied upon by the California Supreme Court in the earlier *Hall v. University of Nevada* decision was *Parden v. Terminal Railroad of Alabama Docks Dept.*, 377 U.S. 184 (1964). The California Supreme Court's interpretation of this Court's decision in *Parden* was erroneous.

In *Parden, supra* this court based its opinion that Alabama was subject to suit in Federal Court in actions arising out of the operation of an interstate railroad on the fact that Alabama had ratified Article 1, Section 8, Clause 3 of the United States Constitution. In the language of the decision:

"Our conclusion is simply that Alabama, when it began operation of an interstate railroad approximately twenty years after enactment of the FELA, necessarily consented to such suit as was authorized by that Act. By adopting and ratifying the Commerce Clause, the States empowered Congress to create such a right of action against interstate railroads; by enacting the FELA in the exercise of its power, Congress conditioned the right to operate a railroad in interstate commerce upon amenability to suit in Federal Court as provided by the Act; by thereafter operating a railroad in interstate commerce, Alabama must be taken to have accepted that condition and thus to have consented to suit." *Parden v. Terminal Railroad of Alabama Docks Dept., supra,* at 192.

The holding in *Parden* rests upon the fact that by ratifying the Commerce Clause of the United States Constitution and thus affirmatively surrendering a portion of their sovereignty to the Federal Government the States consented to be subject to regulation with respect thereto.

The California court's reliance on *Parden* was clearly misplaced. By ratifying the United States Constitution *the State of Nevada did not consent to*

be subjected to suits in the courts of Sister States. The California court's interpretation of *Parden v. Terminal Railroad of Alabama Docks Dept., supra,* was erroneous and this Court should correct such error.

TO DETERMINE WHETHER WHEN A STATE, BY STATUTE, CONSENTS TO SUIT IN THE COURTS OF SISTER STATES, THE FORUM STATE IS OBLIGATED TO GIVE FULL FAITH AND CREDIT TO ANY LIMITATIONS PLACED ON SUCH CONSENT

As will be fully argued if certiorari is granted, the position of petitioners is that the California courts could have only obtained jurisdiction pursuant to Nevada's statutory waiver of sovereign immunity. It is further the position of petitioners that Article 4, Section 1, of the United States Constitution requires that the liability limit contained in Nevada's statutory waiver by Nevada Revised Statutes 41.035 must be given Full Faith and Credit by the courts of California.

When a State gives statutory consent to be sued it may condition its consent by such modes and terms as it sees fit. *Edelman v. Jordan,* 415 U.S. 651 (1974). Moreover in waiving sovereign immunity a State may prescribe the manner and terms by which suit may be brought. *Great Northern Life Insurance Co. v. Read,* 322 U.S. 47 (1944).

If California's courts acquired jurisdiction over Nevada by Nevada's statutory waiver it necessarily follows that the requirements of Full Faith and Credit mandate that the California courts apply the entire statutory waiver scheme including any limitation on liability contained therein.

CONCLUSION

As set forth above, the position of the State of Nevada is:

(1) States of the Union are required to acknowledge the sovereignty of Sister States when such Sister States are performing governmental functions, either inside or outside their borders;

(2) That a State may not be sued in any court without her consent;

(3) That a State does not consent to suit by sending employees within the borders of Sister States for the purpose of performing governmental functions;

(4) That any jurisdiction vested in the California courts must necessarily have come from the statutory waiver of sovereign immunity by the State of Nevada; and

(5) That when jurisdiction is acquired pursuant to Nevada's statutory waiver of sovereign immunity, the requirements of Full Faith and Credit mandate that the entire statutory waiver scheme be adhered to and that the limitation on liability contained therein be applied.

Petitioners reemphasize *that respondents do not need to sue in the State of Nevada to enforce the California Judgment*. Respondents are aware of the existence of funds sufficient to satisfy the judgment belonging to the State of Nevada which are situated in the State of California. Thus, unless this Court grants this Petition for Certiorari execution will be forthcoming and the State of Nevada will be left without any recourse.

When the State of Nevada entered the Union she agreed to be bound by all laws and judicial decisions thereof. Inherent in this agreement was the understanding that the United States Supreme Court, and not the courts of Sister States, was the final arbiter of decisions which directly affected the States

of the Union insofar as such State's relationship with Sister States were concerned.

Nevada now petitions this Court for Ceriorari which if not granted will leave the State of Nevada with no recourse; with no ability to fight a further legal battle in her own courts; and will place her in an uncertain situation with respect to interaction with her Sister States in the furtherance of the performance of governmental functions. This Court should grant the Petition for Certiorari and thereby fulfill its obligation not only to the State of Nevada but to all the States of the Union.

Dated: March 13, 1978

Respectfully submitted,

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APPENDIX

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT - DIVISION FOUR

JOHN MICHAEL HALL, Minor, by and through his Guardian ad Litem, JOHN C. HALL and PATRICIA HALL, Plaintiffs and Respondents, vs. UNIVERSITY OF NEVADA and the STATE OF NEVADA, Defendants and Appellants.	1 Civil 40858 (Sup. Ct. Nos. 43481 470584-8

Defendants-appellants University of Nevada and the State of Nevada appeal from a judgment in the amount of $1,150,000 entered against them in an action brought by respondents for damages for personal injuries. The injuries resulted from a collision between a vehicle occupied by respondents and one driven by Helmut Bohm. It is conceded that, at the time of the accident, Bohm was an employee of the university, a governmental arm of Nevada, and was engaged in official university business. The fact of his agency was not disputed at trial. The accident occurred in California.

Prior to the trial of the case, appellants moved to quash service of summons on the ground that, under the doctrine of

sovereign immunity, Nevada was not subject to suit in California. That motion was granted. Respondents appealed from the order and in Hall v. University of Nevada (1972) 8 Cal.3d 522, the California Supreme Court reversed, unanimously holding that appellants were not immune from suit in California for the driving of their agent within the scope of his employment or for the permissive use of their car within this state. (Id., at p. 526.) Nevada's petition for writ of certiorari to the United States Supreme Court was denied. (414 U.S. 820.)

The Hall decision notwithstanding, immediately prior to the trial of this case, appellants moved for an order limiting damages to $25,000 per person pursuant to Nevada Revised Statutes section 41.035. That statute, hereafter referred to as NRS 41.035, is part of the legislation by which Nevada has waived its immunity from suit. The waiver, as pertinent herein, is found in the following statutes:

Nevada Revised Statutes section 41.031 provides that "The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil action against individuals and corporations. . . ."

NRS 41.035 states in relevant part: "No award for damages in an action sounding in tort brought under NRS 41.031 may exceed the sum of $25,000 . . . to or for the benefit of any claimant." The combined

thrust of these statutes is that Nevada has chosen to waive its sovereign immunity, but to limit such waiver to $25,000 per claimant. (See State v. Silva (1971) 86 Nev. 911, 478 P.2d 591.).

Appellants' motion to limit damages was denied by the trial court. The correctness of this ruling is the sole issue on appeal.

Nevada devotes much of its brief to the re-argument of Hall v. University of Nevada, supra, still contending that it cannot be sued in any court without its consent. Such an argument before this court is futile. We are bound by the Supreme Court's ruling that Nevada is not immune from suit. (Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal. 2d 450,455.)

Appellants' next contention is that, if Nevada is held to be liable in California, that liability must be subject to the $25,000 limit imposed by NRS 41.035. That argument is based on the assumption that in Hall v. University of Nevada, supra, the Supreme Court held that Nevada was subject to suit in this state because it had waived its sovereign immunity. It is argued, in effect, that if California accepts the waiver, it must accept the limitation.

This premise misconceives the point of Hall. The Supreme Court did not hold that Nevada had waived sovereign immunity or had given its implied consent to be sued in California. It held simply that Nevada's sovereign protection does not extend beyond

its borders: "We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California courts with respect to those activities. When the sister state enters into activities in this state, it is not exercising sovereign power over the citizens of this state and is not entitled to the benefits of the sovereign immunity doctrine as to those activities unless this state has conferred immunity by law or as a matter of comity." (8 Cal.3d at p. 524) The court reviewed developments in the law of sovereign immunity in a foreign jurisdiction and concluded that recent cases "reflect that state sovereignty ends at the state boundary." (Id., at p. 525.) After holding that the state and University of Nevada were not immune from suit in California, the court noted that this conclusion "makes it unnecessary to consider plaintiff's further contention that the State of Nevada has consented by statute to suit in California." (Id., at p. 526.)

That the limitation imposed by NRS 41.035 is totally inapplicable to this case is made clear by footnote 4 of Hall v. University of Nevada, supra, stating: "Plaintiffs urge that Nevada has abrogated sovereign immunity by statute. The state and the university claim that the waiver of immunity was a limited one and that the statutory provisions abrogating immunity should be interpreted as permitting action in the courts of Nevada only. Since we conclude that Nevada does not have immunity from liability for its activities in California, the extent to which Nevada has

waived immunity by statute and the extent, if any, to which it can or has limited the statutory waiver is immaterial. Even if we assume that Nevada limited its statutory waiver of immunity to actions in its courts, such limitation would not be applicable to the instant case involving activities in California because the sovereignty of one state does not extend into the territory of another." (Hall, supra, at p. 526, emphasis added.)

Nevada also attempts to argue that application of NRS 41.035 to the present case is required by the full faith and credit clause of the United States Constitution. The contention is without merit. It is well settled that the purpose of the full faith and credit clause was not to give the statutes of one state extra-territorial force in another. (5 Witkin, Summary of Cal. Law (8th ed. 1974) Constitutional Law, § 16, p. 3260.) The United States Supreme Court has long since established that a forum state may refuse to apply a sister state's statutes where such enforcement would be contrary to its own public policy. (Bradford Elec. Co. v. Clapper (1932) 286 U.S. 145, 160; Pacific Ins. Co. v. Comm'n. (1939) 306 U.S. 493, 501-502.) Nevada must therefore rely on its final argument, namely that California's own conflict of law rules require application of NRS 41.035 in the instant case.

The case of Bernhard v. Harrah's Club (1976) 16 Cal.3d 313 (U.S. cert. den. 429 U.S. 859), presents both the latest definitive statement of California's choice of law rules regarding tort actions and a fact

situation extremely close to the one at bench. In Bernhard, plaintiff, a California resident, was struck on a highway in this state by an automobile driven by another California resident who had allegedly been furnished alcoholic beverages in defendant's Nevada establishment after becoming obviously intoxicated. Plaintiff sought application of California law imposing civil liability upon tavern keepers who furnish liquor to obviously intoxicated persons (Bus. & Prof. Code, § 25602; Vesely v. Sager (1971) 5 Cal.3d 153), while defendant demurred on the ground that Nevada law, precluding such liability, was applicable.

The Supreme Court, noting that it faced a "true conflicts" case, applied the "comparative impairment" test which seeks to determine which state's policy would be more impaired if the other state's law were adopted. (Bernhard, supra, at p. 320.) The court pointed out that California's policy interest would be very significantly impaired if it could not extend its regulation to defendant who, soliciting the patronage of California residents, and knowing and expecting those residents to use California's public highways, could nevertheless, with impunity, violate California's prohibition against selling alcoholic beverages to intoxicated persons. (Id., at pp. 322-323.) The court thus held "that California has an important and abiding interest in applying its rule of decision to the case at bench, that the policy of this state would be more significantly impaired if such rule were not applied and that the trial court erred in not applying California law." (Id., at p. 323.)

In the instant case Nevada advances as its policy, the fact that if its liability were not limited, its residents would suffer financially, due to the increased cost of insurance for Nevada vehicles being operated outside the state. California's policy interest lies in providing full protection to those who are injured on its highways through the negligence of both residents and nonresidents.

We consider the policy reasons for applying California law herein to be even stronger than those found in Bernhard. In Bernhard, defendant's culpable conduct occurred entirely within Nevada's own borders, yet the Supreme Court found that merely by soliciting customers from California, knowing and expecting such customers to use California's highways, defendant had "put itself at the heart of California's regulatory interest. . . ." 16 Cal.3d at p. 322.) Here, the State of Nevada's activities and respondents' resulting injuries, took place within California. By thus utilizing the public highways within our state to conduct its business, Nevada should fully expect to be held accountable under California's laws.

The imposition of unlimited liability upon Nevada involves at most an increased economic exposure which, at least for businesses which actively solicit extensive California patronage, is a foreseeable and coverable business expense. (See Bernhard, supra, 16 Cal.3d at p. 323.)

Given the fact that Nevada has chosen to engage in governmental and business activity in this state, the necessary acquisition of additional insurance coverage to protect itself during such activity is an entirely foreseeable and reasonable expense.

For all the reasons heretofore stated, we conclude that the refusal of the trial court to apply NRS 41.035 was proper.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION

Emerson, J. *

WE CONCUR:

Rattigan, Acting P.J.

Christian, J.

1 Civil 40858

*Retired judge of the superior court sitting under assignment by the Chairperson of the Judicial Council.

Trial Judge:	Honorable Spurgeon Avakian, Judge
Trial Court:	Superior Court, Alameda County
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1 Civil 40858

Hall v. University of Nevada

105 Cal.Rptr. 355

Diane HALL, a minor, etc., et al.,
Plaintiffs and Appellants,

v.

UNIVERSITY OF NEVADA et al.,
Defendants and Respondents.

S.F. 22942.

Supreme Court of California,
In Bank.

Dec. 21, 1972.

Rehearing Denied Jan. 24, 1973.

The Superior Court, City and County of San Francisco, Robert W. Merrill, J., entered order quashing service of summons and complaint, and plaintiffs appealed. The Supreme Court, Peters, J., held that university and sister state were not immune from suit in California for driving of their agent within scope of his employment or for permissive use of their automobile within California.

Order reversed.

Opinion, Cal.App., 102 Cal.Rptr. 67, vacated.

1. States 191(1.7)

Sister states who engage in activities within California are subject to California

laws with respect to those activities and are subject to suit in California courts with respect to those activities and, when sister state enters into activities in California, it is not exercising sovereign powers over citizens of California and is not entitled to benefits of sovereign immunity doctrine as to those activities unless California has conferred immunity by law or as a matter of comity.

2. Courts 12(2)

California and its residents and taxpayers have a substantial interest in providing a forum where a resident may seek whatever redress is due him.

3. Courts 12(2)

California has an interest from point of view of orderly administration of the laws in assuming jurisdiction in cases where most of the evidence is within its borders and where a refusal to take jurisdiction may result in multiple litigation.

4. States 191(1.6,1.7)

University and sister state were not immune from suit in California for driving of their agent within scope of his employment or for permissive use of their automobile within California. West's Ann. Vehicle Code, § 27450 et seq.

Bostwick & Rowe and Everett P. Rowe, San Jose, for plaintiffs and appellants.

Bronson, Bronson & McKinnon, Michael H. Ahrens, Michael R. Sheehan and Paul H. Cyril, San Francisco, for defendants and respondents.

PETERS, Justice.

Plaintiffs appeal from an order quashing service of summons and complaint on the defendants, University of Nevada, a corporation, and the State of Nevada.

Plaintiffs filed suit in the San Francisco Superior Court to recover damages for personal injuries alleging that the injuries resulted from a collison in California between their automobile and a car owned by the University and State of Nevada and operated by their agent acting within the scope of his agency.[1]

Service on the university and the state was made pursuant to section 17450 et seq. of the Vehicle Code which provide a method for service on nonresidents who have operated vehicles on the highways of this state, whose agents have done so, or who have consented to the use of their motor vehicles on our highways. With respect to accidents occurring in the state due to such use, the sections

1. The special administrator of the deceased agent was also named as a defendant.

provide for service on the Director of Motor Vehicles and notice of service to the nonresident by registered mail.

The university and the state moved to quash service on the ground that California Courts do not have jurisdiction over the State of Nevada and its governmental agencies. The motion was granted.

[1] We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California courts with respect to those activities. When the sister state enters into activities in this state, it is not exercising sovereign power over the citizens of this state and is not entitled to the benefits of the sovereign immunity doctrine as to those activities unless this state has conferred immunity by law or as a matter of comity.

This principle is illustrated by Parden v. Terminal R.Co., 377 U.S. 184, 190 et seq., 84 S.Ct. 1207, 12 L.Ed.2d 233, involving the operation by a state of a railroad in interstate commerce. The court recognized the general rule that a state is immune from suit in federal court by its own citizens and citizens of another state. The court, however, applied an exception to the general rule and held that because it engaged in interstate commerce, the state was subject to the Federal Employers' Liability Act (45 U.S.C. §§ 51-50) and could be sued under

the act in the federal courts. The court, quoting from Maurice v. State of California, 43 Cal.App.2d 270, 275, 277, 110 P.2d 706, held that the state by engaging in interstate commerce by rail and thereby subjecting itself to the federal legislation must be deemed to have waived any right it may have had arising out of the general rule that a sovereign state may not be sued without its consent.[2] (See also California v. Taylor, 353 U.S. 553, 568, 77 S.Ct. 1037, 1 L.Ed.2d 1034; United States v. California, 297 U.S. 175, 185, 56 S.Ct. 421, 80 L.Ed. 567.)

The principle has also been recognized in state decisions relating to other states. Thus, in People v. Streeper (1957) 12 Ill. 2d 204, 145 N.E.2d 625, 629-630, an injunction proceeding was permitted with respect to property owned by one state in another state, and in State v. Holcomb (1911) 85 Kan. 178, 116 P.251, 254, taxation by one state of property therein owned by another state was permitted. Each proceeding was brought in the state where the property was owned. As pointed out in Streeper, the "sovereignty of one State does not extend into the territory of another so as to create immunity from suit or freedom from judicial interference." (145 N.E.2d at p. 629; see also Georgia

2. The dissenting justices in Parden expressly agreed that Congress had the power to condition a state's permit to engage in interstate commerce upon a waiver of sovereign immunity but disputed whether Congress had intended to do so.

v. Chattanooga, 264 U.S. 472, 479, 44 S.Ct. 369, 68 L.Ed. 796; City of Cincinnati v. Commonwealth (1942) 292 Ky. 597, 167 S.W.2d 709, 714; State v. City of Hudson (1950) 231 Minn. 127, 42 N.W.2d 546, 548-549; State ex rel. Anderson v. City of Madison (Mo. 1969) 444 S.W.2d 443, 445; Note, 81 A.L. R. 1518.) Although these cases involve enforcement of property duties rather than in personam jurisdiction and a transitory action, they reflect that state sovereignty ends at the state boundary.

It is urged that as a matter of comity sister states should be immune from liability in California. In Paulus v. State of South Dakota (1924) 52 N.D. 84, 201 N.W. 867, a citizen of South Dakota was injured while working in a mine owned by that state but located in North Dakota. In holding that as a matter of comity the North Dakota courts should not exercise jurisdiction over its sister state, the Supreme Court of North Dakota relied in part on the fact that the plaintiff was a citizen of South Dakota, and to this extent the case is distinguishable because the plaintiffs herein are California citizens. The court also relied upon the potential embarrassment to the states.

Possible embarrassment may not be held controlling when it is weighed against the policies which warrant the exercise of jurisdiction in the instant case. In upholding the validity of a nonresident motorist statute such as the one under which

respondents were served, the United States Supreme Court has pointed out: "Motor vehicles are dangerous machines; and even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non residents alike, who use its highways. The measure in question operates to require a non resident to answer for his conduct in the state where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights. . . . [T]he state may declare that the use of the highway by the non resident is the equivalent of the appointment of the registrar as agent on whom process may be served." (Hess v. Pawloski, 274 U.S. 352, 356-357, 47 S.Ct. 632, 633, 71 L.Ed. 1091.) The same view has been adopted by the Supreme Court of Nevada in upholding its nonresident motorist statute. (Kroll v. Nevada Industrial Corporation (1948) 65 Nev. 174, 191 P.2d 889, 893.)

[2,3] This court has repeatedly emphasized that this state and its residents and taxpayers have a substantial interest in providing a forum where a resident may seek whatever redress is due him. (Buckeye Boiler Co. v. Superior Court, 71 Cal.2d 893, 899, 906, 80 Cal.Rptr. 113, 4518 P.2d 57; Fisher Governor Co. v. Superior Court, 53 Cal.2d 222, 225, 1 Cal.Rptr. 1, 347 P.2d

1.) The state also has an interest from the point of view of the orderly administration of the laws in assuming jurisdiction in cases where most of the evidence is within its borders and where a refusal to take jurisdiction may result in multiple litigation.[3] (Id.) The presence of the evidence and witnesses in California could, of course, mean that plaintiffs if not permitted to proceed in California could find themselves seriously hampered in proving their case elsewhere.

To hold that the sister state may not be sued in California could result in granting greater immunity to the sister state than the immunity which our citizens have bestowed upon our state government. If a sister state has not abrogated sovereign immunity for tort, it is conceivable that a California citizen would be denied all recovery for an automobile accident in this state even though it the State of Calfiornia had been the defendant recovery would have been permitted.

Finally, it must be pointed out that in a society such as ours, which places such great value on the dignity of the individual and views the government as an instrument to secure individual rights, the doctrine of sovereign immunity

3. Apparently, the instant case is proceeding to trail against the special administrator of the estate of the driver.

must be deemed suspect. (National Bank v. Republic of China, 348 U.S. 356, 359-361, 75 S.Ct. 423, 99 L.Ed. 389; Muskopf v. Corning Hospital Dist. 55 Cal.2d 211, 214-216, 11 Cal.Rptr. 89, 359 P.2d 457.)

[4] We conclude that the State and University of Nevada are not immune from suit in California for the driving of their agent within the scope of his employment or for the permissive use of their car within this state. This conclusion makes it unnecessary to consider plaintiffs' further contention that the State of Nevada has consented by statute to suit in California.[4]

The order appealed from is reversed.

WRIGHT, C. J., and McCOMB, TOBRINER, MOSK, BURKE, and SULLIVAN, JJ., concur.

41.031 Waiver by state, its agencies and political subdivisions of immunity from liability and action; actions; State of Nevada as defendant, service of process.

1. The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive, or the limitations of NRS 41.010. The State of Nevada further waives the immunity from liability and action of all political subdivisions of the state, and their liability shall be determined in the same manner, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive.

2. An action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state. In an action against the state or any agency of the state, the State of Nevada shall be named as defendant, and the summons and a copy of the complaint shall be served upon the secretary of state.

3. The State of Nevada does not waive its immunity from suit conferred by Amendment XI of the Constitution of the United States.

(Added to NRS by 1965, 1413; A 1975, 209, 421; 1977, 275)

41.032 Conditions and limitations on actions: Officers', employees' acts or omissions. No action may be brought under NRS 41.031 or against an officer or employee of the state or any of its agencies or political subdivisions which is:

1. Based upon an act or omission of an officer or employee, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if such statute or regulation has not been declared invalid by a court of competent jurisdiction; or

2. Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the state or any of its agencies or political subdivisions or of any officer or employee of any of these, whether or not the discretion involved is abused.

(Added to NRS by 1965, 1413; A 1967, 992; 1977, 1536)

41.033 Conditions and limitations on actions: Failure to inspect, discover. No action may be brought under NRS 41.031 or against an officer or employee of the state or any of its agencies or political subdivisions which is based upon:

1. Failure to inspect any building, structure or vehicle, or to inspect the construction of any street, public highway or other public work to determine any hazards, deficiencies or other matters, whether or not there is a duty to inspect;

2. Failure to discover such hazard, deficiency or other matter, whether or not an inspection is made.

(Added to NRS by 1965, 1413; A 1967, 993; 1977, 1537)

41.0333 Conditions and limitations on actions: Acts, omissions of members, employees of Nevada National Guard. No action may be brought under NRS 41.031 or against the State of Nevada or the Nevada National Guard or a member or employee of the Nevada National Guard which action is based upon an act or omission of the member or employee while engaged in state or federal training of the Nevada National Guard or duty as prescribed by Title 32 of U.S.C., or regulations adopted pursuant thereto, whether such training or duty is performed within or without the boundaries of this state.

(Added to NRS by 1975, 209)

41.0335 Conditions and limitations on actions: Acts, omissions of sheriffs' deputies, police officers.

1. No action may be brought against:

(a) Any sheriff which is based solely upon any act or omission of a deputy; or

(b) A chief of a police department which is based solely upon any act or omission of an officer of such department.

2. Nothing contained in this section shall be construed:

(a) To limit the authority of the state or a political subdivision or a public corporation of the state to bring an action on any bond or insurance policy provided pursuant to law for or on behalf of any person who may be aggrieved or wronged.

(b) To limit or abridge the jurisdiction of any court to render judgment upon any such bond or insurance policy for the benefit of any person so aggrieved or wronged.

(Added to NRS by 1969, 563)

41.0337 Conditions and limitations on actions: Tort actions against present, former public officers, employees, legislators.

1. No tort action arising out of an act or omission within the scope of his public duties or employment may be brought against any officer or employee, or former officer or employee, of the state or of any political subdivision or against any state legislator or former state legislator unless the state or appropriate political subdivision is named a party defendant under NRS 41.031.

2. The attorney general or, in the case of a political subdivision, the political subdivision shall provide for the defense, including the defense of cross-claims and counterclaims, of any officer or employee or former officer or employee of the state or political subdivision or against any state legislator or former state legislator in any civil action brought against such person in his official or individual capacity or both, if the person, within 10 days after a complaint has been filed against him, submits a written request for such defense:

(a) In the case of an elected officer or an agency head who has no administrative superior, to the attorney general or chief legal officer or attorney of the political subdivision; or

(b) In the case of any other officer or employee, to both his agency administrator and the attorney general or the chief legal officer or attorney of the political subdivision,

and the case is certified for such defense. An agency administrator who receives a written request pursuant to this section shall within 15 days after such receipt notify the attorney general or, in the case of an agency administrator of a political subdivision, the chief legal officer or the attorney of the political subdivision, whether it appears that the act or omission of the person was in good faith and in the scope of the person's public duties or employment, and whether he certifies the case for defense. In cases where the written request for defense must be submitted directly to the attorney general or chief legal officer or the attorney of the political subdivision, that officer shall determine within 15 days after receipt of the request whether it appears that the act or omission was in good faith and in the scope of the person's public duties or employment, and whether he certifies the case for defense. If the case is certified for defense, the attorney general or the chief legal officer or attorney of the political subdivision shall within 10 days determine whether his defense of the action would create a conflict of interest between the state or political subdivision and the person.

The initial written request extends the time to answer, move or otherwise plead to the complaint to 45 days after the date of service.

3. The attorney general or the chief legal officer or attorney of the political subdivision shall notify the present or former officer, employee or legislator as promptly as possible of the decision with respect to the defense of his case so that the person may if necessary procure his own counsel and prepare his own defense. Until the decision is made the attorney general or the chief legal officer or attorney of the political subdivision shall appear in the action and move or plead on behalf of the person. Refusal of the state or political subdivision to defend is not admissible in evidence at trial or in any other proceeding.

4. The attorney general may employ special counsel whose compensation shall be fixed by the attorney general, subject to the approval of the state board of examiners, if he determines that it is impracticable, uneconomical or could constitute a conflict of interest for the legal service to be rendered by him or one of his deputies. Compensation for special counsel shall be paid out of the reserve for statutory contingency fund.

5. The chief legal officer or attorney of a political subdivision may employ special counsel whose compensation shall be fixed by the governing body of the political subdivision if he determines that it is impracticable or could constitute a conflict of interest for the legal services to be rendered by him. Compensation for special counsel shall be paid by the political subdivision.

6. If the attorney general or the chief legal officer or attorney of a political subdivision does not provide for the defense of a present or former officer or employee of the state, or political subdivision or of a legislator and it is judicially determined that the injuries arose out of an act or omission of that person during the performance of his duties and within the scope of his employment, and that his act or omission was not wanton or malicious:

(a) If the attorney general was responsible for providing the defense, the state is liable to him for reasonable expenses in prosecuting his own defense, including court costs and attorney's fees. These expenses shall be paid, upon approval by the state board of examiners, from the reserve for statutory contingency fund; or

(b) If the chief legal officer or attorney of a political subdivision was responsible for providing the defense, the political subdivision is liable to him for reasonable expenses in prosecuting his own defense, including court costs and attorney's fees.

7. In every action or proceeding against an officer or employee, or former officer or employee of the state or any political subdivision or against any legislator or former legislator that results in a final judgment or other disposition, the court or jury shall return a special verdict in the form of written findings which determine:

(a) Whether such officer, employee or legislator was acting within the scope of his public duties or employment; and

(b) Whether the alleged act or omission by the officer, employee or legislator was wanton or malicious.

8. The state or appropriate political subdivision may not require a waiver of the attorney-client privilege as a condition of a defense pursuant to this section.

9. The state or appropriate political subdivision shall indemnify the officer, employee or legislator or former officer, employee or legislator unless it establishes that he failed to cooperate in good faith in the defense of the action or that his conduct was wanton or malicious, in which event it is entitled to contribution from such person.

(Added to NRS by 1975, 896; A 1977, 481, 1537)

41.035 Limitation on award for damages in action sounding in tort.

1. An award for damages in an action sounding in tort brought under NRS 41.031 or against a present or former officer or employee of the state or any political subdivision or any state legislator or former state legislator arising out of an act or omission within the scope of his public duties or employment may not exceed the sum of $35,000, exclusive of interest computed from the date of judgment, to or for the benefit of any

claimant. An award may not include any amount as exemplary or punitive damages.

2. The limitations of subsection 1 upon the amount and nature of damages which may be awarded apply also to any action sounding in tort and arising from any recreational activity or recreational use of land or water which is brought against:

(a) Any public or quasi-municipal corporation organized under the laws of this state.

(b) Any person with respect to any land or water leased or otherwise made available by that person to any public agency.

(c) Any Indian tribe, band or community whether or not a fee is charged for such activity or use. The provisions of this paragraph shall not impair or modify any immunity from liability or action existing on February 26, 1968, or arising after February 26, 1968, in favor of any Indian tribe, band or community.

The legislature declares that the purpose of this subsection is to effectuate the public policy of the State of Nevada by encouraging the recreational use of land, lakes, reservoirs and other waters owned or controlled by any public or quasi-municipal agency or corporation of this state, wherever such land or water may be situated.

3. The limitations of subsection 1 upon the amount and nature of damages which may be awarded apply also to any action sounding in tort arising out of any act or omission within the scope of the public duties or employment of any officer or employee, or former officer or employee, of the state or of any political subdivision, or against any state legislator or former state legislator.

(Added to NRS by 1965, 1414; A 1968, 44; 1973, 1532; 1977, 985, 1539)

41.036 Conditions, limitations on actions against state, counties, cities, unincorporated towns, other political subdivisions.

1. No action shall be brought under NRS 41.031 against a county without complying with the requirements of NRS 244.245 to 244.255, inclusive, or against a city without complying with the requirements of NRS 268.020, or against an unincorporated town without complying with the provisions of NRS 269.085, or against the state or any agency or other political subdivision of the state without complying with the requirements of subsection 2 or 3 of this section.

2. Every claim against the state arising out of contract shall be presented in accordance with the provisions of NRS 353.085 or 353.090, and every claim for refund in accordance with the provisions of NRS 353.110 to 353.120, inclusive. Every other claim against the state or any of its agencies shall be presented to the ex officio clerk of the state board of examiners within 6 months from the time the cause of action accrues. He shall within 10 days refer each such claim to the appropriate state agency, office or officer for investigation and report of findings to the board. No action may be brought unless the board refuses to approve or fails within 90 days to act upon the claim.

3. Every claim against any other political subdivision of the state shall be presented, within 6 months from the time the cause of action accrues, to the governing body of that political subdivision. No action may be brought unless the governing body refuses to approve or fails within 90 days to act upon the claim.

(Added to NRS by 1965, 1414; A 1969, 1117)

41.037 Administrative settlement of claims, actions. Upon receiving the report of findings as provided in subsection 2 of NRS 41.036, the state board of examiners may allow and approve any claim or settle any action against the state, any of its agencies or any of its present or former officers, employees or legislators arising under NRS 41.031 to the extent of $25,000, plus interest computed from the date of judgment. Upon approval of any claim by the state board of examiners, the state controller shall draw his warrant for the payment thereof, and the state treasurer shall pay the same from the reserve for statutory contingency fund. The governing body of any political subdivision whose authority to allow and approve claims is not otherwise fixed by statute may allow and approve any claim or settle any action against that subdivision or any of its present or former officers or employees arising under NRS 41.031 to the extent of $25,000, plus interest computed from the date of entry of any judgment, and pay it from any funds appropriated or lawfully available for such purpose.

(Added to NRS by 1965, 1414; A 1973, 1532; 1977, 1539)

41.038 Insurance of state, local government, officers, employees against liability.

1. The state and any local government may:

(a) Insure itself against any liability arising under NRS 41.031.

(b) Insure any of its officers or employees against tort liability resulting from an act or omission in the scope of his employment.

(c) Insure against the expense of defending a claim against itself or any of its officers or employees whether or not liability exists on such claim.

2. Any school district may insure any peace officer, requested to attend any school function, against tort liability resulting from an act or omission in the scope of his employment while attending such function.

3. As used in this section:

(a) "Insure" means to purchase a policy of insurance or establish a self-insurance reserve or fund, or any combination thereof.

(b) "Local government" means every political subdivision and every other governmental entity in this state.

(Added to NRS by 1965, 1414; A 1969, 272, 564; 1977, 388)

41.039 Filing of valid claim against political subdivision condition precedent to commencement of action against employee, officer. An action which is based on the conduct of any employee or appointed or

elected officer of a political subdivision of the State of Nevada while in the course of his employment or in the performance of his official duties may not be filed against such employee or officer unless, prior to the filing of the complaint in such action, a valid claim has been filed, pursuant to NRS 41.031 to 41.038, inclusive, against the political subdivision for which such employee or officer was authorized to act.

(Added to NRS by 1968, 27)

CERTIFICATE OF SERVICE

I, JAMES H. THOMPSON, Chief Deputy Attorney General, hereby certify that on the 20th day of March, 1978, I mailed by first class mail, postage prepaid, three copies to each of the following:

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